

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

LAWRENCE CROSBY,
Appellant

v.

D-04-288

BOSTON FIRE DEPARTMENT,
Respondent

Appellant's Attorney:

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P.O. Box 133
Malden, MA 02148
(781) 321-3762

Respondent's Attorney:

Paul Curran, Esq.
City of Boston
Office of Labor Relations
Boston City Hall: Room 624
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Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT'S MOTION TO DISMISS

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Lawrence Crosby (hereafter "Crosby" or Appellant") appealed the decision of the Respondent, the Boston Fire Department (hereafter "Appointing Authority", or "City" or "BFD"), to remove him from the position of EMS Instructor and return him to his position as a firefighter. The Appellant filed a timely appeal with the Civil Service Commission.

A pre-hearing conference was conducted at the offices of the Civil Service Commission on October 13, 2004 by Commissioner Henderson who is no longer with the

Commission. Subsequent to the pre-hearing, the Appointing Authority filed a Motion to Dismiss on November 10, 2004 and the Appellant filed an Opposition with the Commission on November 15, 2004.

The Appellant is a tenured civil service employee in the position of firefighter and began working in that position on August 15, 1985. It is undisputed that at some point, (according to the Appellant, sometime in 1999), the Appellant was assigned to give emergency medical service (EMS) training to firefighters. While in that position, the Appellant received a lieutenant's pay. It is undisputed that that the Appellant was never permanently promoted and therefore, never received civil service permanency, into the position of lieutenant.

On May 20, 2004, after serving in the EMS division for five years receiving lieutenant's pay, the Appellant was returned to a fire station performing his traditional duties of firefighter, no longer receiving a lieutenant's pay. His permanent civil service title at all times remained that of firefighter.

According to the Appellant, the above-referenced action was disciplinary in nature as a result of the Appellant's returning late from a dentist's appointment.

The Appellant filed an appeal with the Civil Service Commission claiming that the Boston Fire Department did not have just cause for "demoting" him from the position of EMS Instructor. Further, in his answer to the City's Motion to Dismiss, the Appellant, cites the City's failure to adhere to the provisions of G.L. c. 31, § 35 regarding transfers, specifically, failing to provide sound and sufficient reasons for said transfer.

The City, in its Motion to Dismiss, argues that the Commission lacks jurisdiction to hear this appeal. Specifically, the City argues that while the Appellant is a tenured civil

service employee in the position of firefighter, he never had civil service permanency in any higher title, including lieutenant. According to the City, the Appellant's claim that he was "demoted" is not a viable claim under Chapter 31 because his civil service rank at all times remained that of firefighter. The Commission concurs with the City.

Even if the action taken by the City was disciplinary in nature, the Appellant in this case has no recourse with the Commission. The Appellant, in his own handwriting on the appeal form filed with the Commission, states that he is appealing the "demotion" (i.e. – his reduction in pay from that of lieutenant to firefighter.) The Appellant does not have civil service permanency in the position of lieutenant. Rather, his civil service permanency rests in the position of firefighter, a position he has been allowed to retain. It is analogous to a permanent civil service employee receiving a provisional promotion into a higher position. If that employee is demoted from his provisionally promoted position back to his permanent position, Chapter 31 does not allow that employee to appeal the demotion from the provisional position to the Commission.

For these reasons, the Appellant's appeal under Civil Service Commission Docket No. D-04-288 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman, Commissioner

By vote of the Civil Service Commission (Goldblatt, Chairman; Bowman, Guerin, Marquis and Taylor, Commissioners) on January 11, 2007.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice:

Paul Curran, Esq.

Dana B. Johnson, Esq.